IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/03/2004

CORAM

THE HON'BLE MR.JUTICE M. CHOCKALINGAM

SECOND APPEAL NO.865 OF 1993
AND
W.P.NO.35122 OF 2003
AND
W.P.M.P.NO.42697 OF 2003

S.A.NO.865 OF 1993:

Muthukrishnan .. Appellant

-Vs-

1. Natesan
2. Nallammal
3. Palanivel @ Palaniswamy .. Respondents

W.P.NO.35122 OF 2003:

Nallammal .. Petitioner

Vs.

1. The Special Commissioner and
Commissioner, Land Administration,
Chepauk, Chennai-5

2. The District Revenue Officer,
Villupuram

3. The Revenue Divisional Officer,
Virudhachalam now at
Kallakurichi

4. K. Muthukrishnan .. Respondents

This second appeal is preferred under Section 100 of CPC against the judgment and decree made in AS No.45 of 1991 dated 17.2.1993 on the file of the learned Subordinate Judge, Vriddhachalam reversing the judgment and decree passed in OS No.590 of 1984 dated 25.2.1991 on the file of the learned District Munsif, Kallakurichi and this writ petition is preferred under Article 226 of the Constitution of India praying for the issue of writ of

certiorari as stated therein.

!For Appellant : Mr.S.Kamadevan
for Mr.G.Sankaran in SA
for 4th respondent in WP

^For Respondents: Mr.V.Venkatesan in SA
and for petitioner in WP

:COMMON JUDGMENT

This judgment shall govern the second appeal No.865 of 1993 and W.P.No.35122 of 2003.

2. This second appeal is directed against the judgment of the learned Subordinate Judge, Vridhachalam made in AS No.45/91 reversing the judgment of the trial court in a suit for declaration and injunction, wherein the decree was granted in favour of the appellant/plaintiff.

3. The following shorts facts would be suffice for the disposal of this Second Appeal:

The suit property situated in Government poramboke was assigned in favour of the plaintiff under D.K.T.No.149/90 dated 12.5.1981, which was marked as Ex.A.1. From the date of assignment, the plaintiff has been in possession and enjoyment of the suit property by paying kist all along. The defendants 1 to 3, who are the respondents herein without any manner of right or interest over the suit property, have attempted to interfere in the peaceful possession and enjoyment of the property by the plaintiff. Under the stated circumstances, there arose a necessity for filing the suit seeking for declaration and for consequential permanent injunction.

4. The suit was resisted by the defendants inter-alia stating that there was no assignment in favour of the plaintiff and the property in respect of which the plaintiff seeks relief is situated in Survey No.25/2 and not in S.No.25/3; that the property was actually in possession of one Kandasamy; that without any iota of evidence, the plaintiff sought the above reliefs and the suit was to be dismissed.

5. The trial court framed necessary issues, tried the suit and granted decree in favour of the plaintiff. Aggrieved, the defendants took it on appeal and the appeal was allowed setting aside the judgment of the trial court and the suit was dismissed. Aggrieved, the plaintiff has brought forth this second appeal.

6. The above writ petition has been filed by the second defendant in the suit seeking for the issue of a writ of certiorari to quash the order of the Special Commissioner and Commissioner, Land Administration made in Na.Ka.G1/26094/98 dated 30.9.2003, wherein the order of the District Revenue Officer cancelling the assignment made in favour of the plaintiff was reversed and the order of assignment granted already was found to be correct.

7. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:

1) When there is an admission by the defendants that S.No.25/3 lies on the west of the lands of Karuppan, whether the lower appellate Court is justified in holding that there is no field bearing S.F.No.24/3 ?
2) When the Special Tahsildar who has issued TKT patta to the plaintiff and the kist receipts being issued for faslis 1392 thereafter to the plaintiff, whether the lower appellate Court is justified to discard the same partly on conjectures and partly on a misunderstanding of the evidence?
8. Heard the learned counsel appearing for the appellant in the second appeal and also the fourth respondent in the writ petition and also the learned counsel for the respondents in the second appeal and the petitioner in the writ petition.
9. After careful consideration of the rival submissions made, this Court is of the considered view that the judgment of the first appellate court has got to be set aside and the judgment of the trial court has got to be reversed. This Court is unable to see any substance or merit in the writ petition, and hence, it requires dismissal in the hands of this Court.
10. The plaintiff sought the relief specifically stating that the assignment was made in his favour on 12.5.1981 in D.K.T.No.149/90 under Ex.A.1 and he was put in possession. It is not in dispute that the property in respect of which, he seeks the relief is a Government poramboke. The plaintiff, in order to prove his case, has not only relied on Ex.A.1 assignment, but also the kist receipts. What was all contended by the defendants before the courts below and equally here also is that the second defendant was entitled to 2 acres and 66 cents situated in S.No.25/2. But, the land in respect of which the plaintiff sought the relief was actually in possession of one Kandasamy and there is no land in S.No.25/3, because there is no sub division at all and that under the guise of Ex.A.1 assignment, the plaintiff was making an attempt to grab the property of the second defendant, and hence, the suit was to be dismissed.
11. The first appellate court has denied the relief stating that from the available evidence, it could not be found that there was any subdivision in S.No.25/3. The specific case of the plaintiff was that the assignment was made in S.No.25/3 and he was in possession, and hence, the defendants were not entitled to the relief. In order to arrive at such a conclusion, the first appellate court has relied on the evidence of the Tahsildar and the other documents. It is pertinent to pointed out that even the Tahsildar, who was also examined on the side of the defendants, has not spoken anything about Ex.A.1 assignment that it was a concocted or fabricated one and it was not the one issued by the State. There was not even a comment by the first appellate court that Ex.A.1 assignment was not one issued by the State.
12. At this stage, it remains to be stated that pending proceedings, the second respondent has filed an application before the third respondent in the writ petition seeking cancellation of the assignment in favour of the plaintiff stating that there was originally no sub division in S.No.25/3 and pending suit such a subdivision was made and that has caused prejudice to the writ petitioner, and hence, it was to be cancelled. It has to be pointed out that it was not the case of the second defendant/writ petitioner that the suit property was in her possession, but in the possession of one Kandasamy. It is further to be added that the plaintiff wanted to get the relief of declaration and the consequential relief based on Ex.A.1. Had it been a fabricated one, there was no necessity for the writ petitioner to move the Tahsildar for

cancellation of such an assignment made in favour of the plaintiff. Though the third respondent originally cancelled the assignment, the same was affirmed by the second respondent. On appeal, the first respondent has set aside the above orders and found that there was an assignment in favour of the plaintiff under Ex.A.1. Under the stated circumstances, there has been proper appreciation of the facts and circumstances by the first respondent, who has arrived at a correct conclusion by stating that there was proper assignment made and subdivision should have been done and accordingly, it lies in S.No.25 /3 and the assignment was proper and legal.

13. According to the defendants/respondents in the second appeal, the property was actually in possession of one Kandasamy and not their favour. But, by stating that the property was in possession of one Kandasamy, they have been agitating against the plaintiff, in whose favour Ex.A.1 assignment was made by the Government. Ex.A.1 assignment was found to be legal and also proper by the Special Commissioner and the Commissioner, Land Administration. Hence, under the stated circumstances, as rightly pointed out by the trial court, the plaintiff was entitled to the relief of declaration and consequential injunction and the defence plea put forth by the defendants cannot be sustained. The contention of the respondents/defendants' side that the appellant/plaintiff attempted to interfere in the possession of the defendant in S.No.25/2 cannot be countenanced for the simple reason that all along the defence plea was that the property what is alleged to have been assigned to the plaintiff under Ex.A.1 was in possession of one Kandasamy and not in possession of the defendants. Under the stated circumstances, the judgment of the first appellate court is set aside.

14. In the result, the second appeal is allowed and the writ petition is dismissed. The parties shall bear their costs. Consequently, connected WPMP is closed.

Index : Yes
Internet : Yes

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To

1. The Subordinate Judge, Vridhachalam
2. The District Munsif, Kallakurichi
3. The Record Keeper, VR Section,
High Court, Madras
4. The Special Commissioner and
Commissioner, Land Administration,
Chepauk, Chennai-5
5. The District Revenue Officer,
Villupuram
6. The Revenue Divisional Officer,
Virudhachalam now at
Kallakurichi